Rice v. Safeco, 02-55199

KLEINFELD, Circuit Judge, dissenting.

I respectfully dissent. In my view, the California Supreme Court should and would reach a result different from the Court of Appeal's decision in Presley Homes, Inc. v. American States Insurance Co.[1]

Presley Homes strikes me as an outlier. It held that "public policy" compels an insurer to provide a full defense to an entire action upon tender by an additional insured, regardless of the terms of the parties' insurance contract, the parties' reasonable expectations, or whether any premiums had been paid. Presley Homes extends Buss v. Superior Court[2] beyond its limits in reaching this result. Buss held that an insurer has a broad duty to defend a mixed action tendered by a named insured on a commercial general liability insurance policy.[3] This obligation to defend, imposed by Buss as a matter of policy, stems from "the fact that the insurer has been paid premiums by the insured for a defense."[4] It is one thing to

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[1] 108 Cal. Rptr. 2d 686 (Cal. Ct. App. 2001).

[2] 939 P.2d 766 (Cal. 1997).

[3] Id. at 769.

[4] Id. at 774, 775.

broaden the duty to defend a named insured that pays the premium, but quite another, logically and practically, to broaden the duty for an additional insured. The practical effect of Presley Homes is to saddle subs with the expense of defending the general far outside any liabilities having to do with the sub's work.

The California Supreme Court would, in light of its precedents, look to the policy language and the parties' reasonable expectations in determining the extent of the duty to defend potentially-covered claims tendered by an insured under an additional insured endorsement. Since Presley Homes, to the contrary, rejects both the policy language and the parties' reasonable expectations, it is not good law in California.